

## REMARKS

Favorable reconsideration of this application is respectfully requested in view of the following remarks.

Claims 1, 3-13 and 15-21 are pending in this application. Claims 1 and 15 are the only independent claims. By this Amendment, Claims 16 and 17 are amended, Claims 18-21 are added. The specification also is amended to correct an informality. Support for the amendment to Claims 16 and 17 can be found, for example, in Figs. 1 and 2. Support for the Claims 18 and 19 can be found, for example, in paragraph [0024] of the specification. Support for the Claims 20 and 21 can be found, for example, in Fig. 2. No new matter is added.

### **I. Objection to the Specification**

The Office Action objects to the specification because of informalities. The objection is respectfully traversed.

First, paragraphs [0020] and [0021] of the specification were amended on January 22, 2009 to correct a discrepancy between the original versions of these paragraphs and original Fig. 1. Previously amended paragraphs [0020] and [0021] state that the attachment points (i.e., reference numerals 10a, 10b, 11a, 11b, 14a, 14b, 15a, 15b) are *near* the front edge 12 and *near* the rear edge 13, respectively, of the diaper 1. This is shown in original Fig. 1. While the attachment points are "on" respective front and rear *portions* of the article (i.e., see reference numerals 5 and 7), none of the attachment points (i.e., reference numerals 10a, 10b, 11a, 11b, 14a, 14b, 15a, 15b) in original Fig. 1 contact the front *edge* 12 or the rear *edge* 13 of the article. That is, none of the attachment points (i.e., reference numerals 10a, 10b, 11a, 11b, 14a, 14b, 15a, 15b) are "on" the front edge 12 or the rear edge 13.

Accordingly, paragraphs [0020] and [0021] of the specification amended on January 22, 2009 are consistent with original Fig. 1.

Second, the specification is amended as shown above to be more commensurate with the claims. The claims are not limited to the disclosed embodiments.

Withdrawal of the objection is respectfully requested.

## II. Claim Language Interpretation

As a preliminary matter, the following comments are provided regarding the Examiner's Claim Language Interpretation in paragraph four on page 3 of the Office Action.

"During patent examination, the pending claims **must** be 'given their broadest reasonable interpretation **consistent with the specification**'" (MPEP §2111, emphasis added). The Federal Circuit's *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) stated:

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "**in light of the specification**" as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Indeed, the **rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification"** and the terms and phrases used in the claims must find clear support or antecedent basis in the description **so that the meaning of the terms in the claims may be ascertainable by reference to the description**" (emphasis added, see also 37 CFR §1.75(d)(1)).

In view of the above, it is clear that the Office Action here is not free to interpret claimed features in a manner that is inconsistent with the Applicant's specification. On the contrary, the Examiner **must** reasonably interpret the recited features in a manner that is consistent with the specification. For example, it would

not be proper for the Examiner to interpret a claim feature according to a dictionary definition that is inconsistent with the Applicant's specification. Nor would it be proper to interpret a claim feature according to a definition provided in a prior art reference if the interpretation is inconsistent with the Applicant's specification.

### **III. Prior Art Rejections**

The Office Action rejects Claims 1, 3-7, 11-13 and 15-17 under 35 U.S.C. §103(a) over Suzuki, JP-A-64-77607, in view of Feist, U.S. Patent No. 6,142,985, and Lawson, U.S. Patent No. 4,695,278, and further in view of Robertson, U.S. Patent No. 5,026,364; or alternatively under 35 U.S.C. §103(a) over Suzuki in view of Sageser et al. ("Sageser"), U.S. Patent No. 5,496,428, and further in view of Feist, Lawson and Robertson. The Office Action also rejects claims 8-10 under 35 U.S.C. §103(a) over Suzuki in view of Sageser, Feist, Lawson and Robertson. The rejections are respectfully traversed.

Independent Claim 1 is directed to an absorbent article including a rear barrier formed in the rear portion and attached to the article along the rear edge of the article, and that a first side barrier is secured to the upper cover sheet of the article to form a first line of attachment and a second side barrier is secured to the upper cover sheet to form a second line of attachment. The first and second side barriers cooperate with the rear barrier to form a pocket. The pocket extends to the rear edge of the article and beyond the first and second lines of attachment in the transverse direction of the article. Independent Claim 15 recites similar features.

The Office Action acknowledges that Suzuki fails to disclose a rear barrier and pocket formed in the rear portion of the article as recited in independent Claims 1 and 15. Lawson and Sageser also fail to disclose a rear barrier, and therefore

necessarily fail to disclose a rear barrier comprising a pocket having the above claim features.

Feist discloses a diaper 1020 having a pair of barrier flaps 77 and a unitary waistcap/waistband 70 as shown in Figs. 10 and 11 of Feist. The Office Action appears to take the position that the pair of barrier flaps 77 corresponds to the claimed first and second side barriers, and that the unitary waistcap/waistband 70 corresponds to the claimed rear barrier. However, the pair of barrier flaps 77 ("first and second side barriers") do not cooperate with the waistcap/waistband 70 ("rear barrier") to form a pocket extending to the rear edge of the diaper 1020 and beyond lines of attachment of the barrier flaps 77 in the transverse direction of the diaper 1020, as recited in independent Claims 1 and 15.

According to Feist, each barrier flap 77 is secured directly to the topsheet 24 by an attachment member at one location (opposite the element designated with reference numeral 1004 in Fig. 11 of Feist, see col. 31, lines 28-30 of Feist), and at a second location via a second closure member 1016 (see Fig. 11 and col. 31, lines 45-47). In addition, each barrier flap 77 is secured to the waistcap/ waistband 70 via a first closure member 1014 provided directly above the second closure member 1016 (see Fig. 11 and col. 31, lines 42-45). The waistcap/ waistband 70 is attached to the topsheet 24 via side closure member 1018 as shown in Fig. 11 of Feist. Accordingly, the pocket formed by the cooperation of the pair of barrier flaps 77 ("first and second side barriers") with the waistcap/waistband 70 ("rear barrier") extends only to the first closure member 1014 and the second closure member 1016 in the transverse direction of the diaper 1020. That is, the pocket formed by the cooperation of the pair of barrier flaps 77 ("first and second side barriers") with the

waistcap/waistband 70 ("rear barrier") does not extend **beyond** the second closure member 1016 ("line of attachment") in the transverse direction of the diaper 1020 or **beyond** the location opposite the element designated with reference numeral 1004 in Fig. 11 of Feist where the barrier flap 77 is directly secured to the topsheet 24 ("line of attachment"). Thus, Feist fails to disclose the claimed pocket formed by the cooperation of the first and second side barriers with the rear barrier.

Robertson fails to overcome the deficiencies of Feist. Robertson's barrier cuffs 62 are attached to a liquid receiving surface 40 at an edge attachment 98 (see Figs. 1 and 2 of Robertson). According to Robertson, the second edge 66 of the barrier cuffs 62 and the distal edges 86 of the inward portion 82 of the waistcap/waistband 78 overlap at four points or areas 110 to provide a containment pocket (see Fig. 1 and col. 5, lines 12-15). Thus, the pocket formed by any cooperation of the barrier cuffs 62 with the waistcap/waistband 78 extends only to the four points 110 shown in Fig. 1 of Robertson. The pocket formed by the cooperation of the barrier cuffs 62 with the waistcap/waistband 78 does not extend beyond the edge attachment 98 (alleged by the Office Action to correspond to the claimed "first and second lines of attachment").

Robertson discloses in an alternative embodiment that the outward portion 80 (see Fig. 3) of the waistcap/waistband 78 can extend across the entire lateral width of the diaper 20, and that the waistcap/waistband 78 can extend across the entire lateral width of the absorbent core 44 (see col. 13, line 52 to col. 14, line 22). The Office Action interprets this embodiment to mean that the pocket formed by the waistcap/waistband 78 may extend beyond the edge attachment 98 ("first and second lines of attachment") in the transverse direction of the article and be attached

to the diaper 20 adjacent tape tab fasteners 54. However, in such a configuration, the pocket would be defined by the waistcap/waistband 78 and the liquid receiving surface 40 (where lateral edges of the extended waistcap/waistband 78 are attached adjacent tape tab fasteners 54). Such a pocket would not be defined by cooperation of the barrier cuffs 62, which are provided inward of the edge attachment 98, with the waistcap/waistband 78. In other words, the waistcap/waistband 78 would not **cooperate with the barrier cuffs 62** to form a pocket that extends **beyond** the edge attachments 98 ("first and second lines of attachment") in the transverse direction of the diaper 20, as recited in independent Claims 1 and 15. Thus, Robertson fails to overcome the deficiencies of Feist.

Accordingly, the combination of applied references, does not disclose, and would not have rendered obvious, the combination of features recited in independent Claims 1 and 15, the claimed first and second side barriers cooperating with the rear barrier to form a pocket that extends to the rear edge of the article and beyond the first and second lines of attachment in the transverse direction of the article. Thus, independent Claims 1 and 15 are patentable over the applied references for at least these reasons.

Claims 3-7, 11-13, 16 and 17 are patentable over the applied references at least by virtue of their respective dependence from the patentable independent Claims, as well as for the additional features these claims recite.

For example, Claims 16 and 17 define that the entire pocket is provided beyond the absorption body in the longitudinal direction. As discussed above, the Office Action acknowledges that Suzuki fails to disclose a pocket formed in the rear portion of the article. Sageser and Lawson also fail to disclose such a pocket.

Robertson discloses that the second edge 66 of the barrier cuffs 62 and the distal edges 86 of the inward portion 82 of the waistcap/waistband 78 overlap at four points 110 to provide a containment pocket. However, as clearly shown in Figs. 1-3 of Robertson, at least a portion of the pocket formed by the barrier cuffs 62 and the waistcap/waistband 78 *overlaps* the absorbent core 44 in the longitudinal direction of the diaper 20. That is, the entire pocket is not provided beyond the absorbent core 44 of the diaper 20 in the longitudinal direction of the diaper 20. Further, Figs. 10 and 11 of Feist clearly show that the pocket formed by the waistcap/waistband 78 overlaps the absorbent core 28. Thus, Claims 16 and 17 are patentable over the applied references for at least these additional reasons.

Withdrawal of the rejections is respectfully requested.

#### **IV. Claims 18-21**

Claims 18-21 are presented for consideration. Claims 18 and 19 recite that the cooperation of the first and second side barriers with the rear barrier forms a side barrier of the pocket in the longitudinal direction of the article, the side barrier disposed beyond the first and second lines of attachment in the transverse direction of the article. Claims 20 and 21 define that the at least one longitudinal elastic element of each side barrier is positioned at or near the fold along an entire length of the at least one longitudinal elastic element. These claims are patentable over the applied references at least by virtue of their dependence from patentable independent Claims 1 and 15, respectively, as well as for the additional features these claims recite.

**V. Conclusion**

In view of the above, the Examiner is respectfully requested to reconsider and withdraw the current rejections and objection, and to allow the present application.

In the event that there are any questions concerning this amendment, or the application in general, the Examiner is respectfully urged to telephone the undersigned attorney so that prosecution of the application may be expedited.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17 and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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